

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
VIRGINIA STATE GOLF ASSOCIATION, INC.
VWP PERMIT NO. 99-F0233**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Virginia State Golf Association, Inc. for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “VSGA” means Virginia State Golf Association, Inc. certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Project” means the Virginia State Golf Association, Inc. residential golf community called Founders Bridge which is owned and operated by Virginia State Golf Association, Inc. and is located in Powhatan and Chesterfield Counties, Virginia along State Route 607 and State Route 711.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Virginia Water Protection (VWP) Permit No. 99-F0233.

SECTION C: Findings of Fact and Conclusions of Law

1. VSGA owns the golf course portion of the project, Founders Bridge, and Gray Land and Development Company, LLC owns the residential development of the project. During the pre-application discussions with the regulatory agencies, Williamsburg Environmental Group, Inc. (WEG), explored the possibility of separating this project into two entities. The direction from the government agencies was to combine the golf and residential portions of the development into a single project. The Permit was issued to VSGA on November 16, 1999, and will expire on November 16, 2004.
2. The Permit allows impacts to 2.53 acres of nontidal forested headwater wetlands and 0.17 acres (3006 linear feet) of intermittent stream channel which is located in the proposed 627 acre residential golf course community. The project includes the construction of a golf course, three open-water irrigation impoundments, roads, stream restoration, a water intake and fill. Compensations mitigation is onsite and is as follows: The creation of 5.06 acres of forested wetlands in-kind and creation of 10.22 acres of open-water impoundment.
3. On March 14, 2002, an inspection and meeting was held with WEG staff. The purpose of the visit was to perform an on-site inspection during construction and to discuss the alternatives analysis for the major modification request that had been submitted to DEQ in November 2001.
4. DEQ staff observed during the March 14, 2002 site inspection, that the golf club maintenance facility and proposed construction of some roads addressed in the permit modification request, had already been built without authorization through the modification of the Permit. These activities impacted approximately an additional three hundred (300) linear feet of stream above the originally authorized impacts. It was also observed that approximately two hundred (200) linear feet of stream had been bypassed by a culvert and filled. This activity had not been included in the modification request.
5. DEQ staff also observed that the permittee failed to flag the non-impacted wetlands within 50 feet of any clearing or grading. These areas were not

demarcated during active construction activities. Part I.8 of the Permit requires these areas be clearly flagged or demarcated for the life of the construction activity in that area.

6. DEQ issued a Notice of Violation (NOV) to VSGA on May 22, 2002, and remailed the notice to an updated address on May 30, 2002, citing the Permit violations, as listed above, for unauthorized impacts and for failure to flag the non-impacted wetlands during construction activity in the area.
7. On June 20, 2002, a meeting was held with WEG to discuss resolution of the violation listed in the NOV.
8. In a letter dated June 25, 2002, DEQ staff memorialized agreements made at the meeting, the required submittals, and clarified issues discussed.
9. An Order had been negotiated and signed by VSGA on September 19, 2002.
10. On November 20, 2002, DEQ staff inspected the facility and observed additional violations.
11. DEQ staff observed during the November 20, 2002 site inspection, that approximately 450 additional linear feet of intermittent channel and approximately 0.2 acres of forested wetlands were impacted. These impacts exceeded the permitted impact limits as described in Part I.1 of the Permit and the limits proposed in the current draft permit modification.
12. DEQ staff observed that the permittee had again failed to flag the non-impacted wetlands within 50 feet of any clearing or grading resulting in additional unauthorized impacts. These areas were not demarcated during active construction activities as Part I.8 of the Permit requires.
13. DEQ staff also observed construction and trash/waste materials dumped in a non-impact wetland area. Part I.13 of the Permit requires that all construction and demolition activities associated with this project be accomplished in such a manner that construction and/or waste materials do not enter State waters.
14. DEQ issued an NOV on December 16, 2002, citing the violations listed above that the DEQ staff observed on the November 20, 2002 site inspection.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders VSGA and VSGA agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders VSGA, and VSGA voluntarily agrees, to pay a civil charge of **\$24,500.00** within 30 days of the effective date of the Order in settlement of the

violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for VSGA. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of VSGA, for good cause shown by VSGA, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, VSGA admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. VSGA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. VSGA declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by VSGA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. VSGA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. VSGA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VSGA shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and VSGA. Notwithstanding the foregoing, VSGA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to VSGA. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve VSGA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, VSGA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

VSGA voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of

_____, 2003, by _____, who is

(name)

_____ of VSGA, on behalf of VSGA.

(title)

Notary Public

My commission expires: _____.

APPENDIX A

VSGA shall:

1. **By September 30, 2002**, record protective buffers along the southern end of Michaux Creek as outlined in the site map submitted to DEQ by letter dated June 10, 2002, from the Williamsburg Environmental Group (WEG).
2. **By September 30, 2002**, submit to DEQ an approvable final stream channel restoration plan as described in the DEQ letter dated June 25, 2002, addressed to WEG.
3. **By December 15, 2002**, complete the stream restoration project as described in the final approved stream restoration plan.
4. **By February 1, 2003**, request a modification to VWP Permit No. 99-F0233 and submit a mitigation proposal for additional impacts discovered during the November 20, 2002 site inspection.
5. In order to maintain compliance with Part I.8 of the Permit, *clearly flag or demarcate* the non-impacted wetlands within 50 feet of any clearing or grading *for the life of the construction activity in that area*.
6. Submit all documentation required by this Consent Special Order to:

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060